

# NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

## NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

### TITLE 3. AGRICULTURE

#### CHAPTER 2. DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

#### PREAMBLE

**1. Register citation and date for the original Notice of Proposed Rulemaking:**

8 A.A.R. 5064, December 13, 2002

**2. Sections Affected**

R3-2-801  
R3-2-803  
R3-2-903  
R3-2-906

**Rulemaking Action**

Amend  
Amend  
Amend  
Amend

**3. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 3-107(A)(1), 3-603(A), and 3-667

Implementing statutes: A.R.S. §§ 3-601.01, 3-605, 3-606, 3-663, 3-712, 3-715, 3-733, and 3-739

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Sherry D. Blatner, Rules Analyst  
Address: Arizona Department of Agriculture  
1688 W. Adams, Room 235  
Phoenix, AZ 85007  
Telephone: (602) 542-0962  
Fax: (602) 542-5420  
E-mail: sherry.blatner@agric.state.az.us

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

This rulemaking is in response to the Division's five-year review of rules approved by the Council on August 6, 2002.

Rules R3-2-801 and R3-2-803 contain out-dated incorporations by reference. The most current material is incorporated in the amended rules.

R3-2-903 contains language that may be confusing, the amendments provide greater clarity. R3-2-906 has additional language included to provide enhanced understandability.

Language usage is conformed to the current publication standards of the Office of the Secretary of State.

**6. An explanation of the substantial change which resulted in this supplemental notice:**

R3-2-801 contains incorporations of the "3-A Sanitary Standards" and the "3-A Accepted Practices." The Notice of Proposed Rulemaking cited the amendment date of November 21, 2000. However, when the Department purchased the newest Standards, the material was amended as of May 31, 2002. The Supplement permits the Department to incorporate the May 31, 2002 revision.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

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**8. The preliminary summary of the economic, small business, and consumer impact:**

A. *The Arizona Department of Agriculture.*

The Department will incur modest expenses related to educating the regulated community on the amendments.

B. *Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected by the Rulemaking.*

Businesses engaged in dairy production will be required to operate under the most current editions or amendments of incorporated material. Clarification of language in the amended rules should enhance the producers' ability to comply with regulations.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Sherry D. Blatner, Rules Analyst

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**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit comments, please contact the rules analyst listed in item #4 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 4:30 p.m. on April 15, 2003.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

"3-A Sanitary Standards" and "3-A Accepted Practices," as published by the International Association for Food Protection, amended November 21, 2000. R3-2-801

Grade A Pasteurized Milk Ordinance – 1978 Recommendations of the United States Public Health Service/Food and Drug Administration, 2001 Revision. R3-2-801

21 CFR 101, 131, and 133, amended April 1, 2002. R3-2-803

**13. The full text of the rules follows:**

**TITLE 3. AGRICULTURE**

**CHAPTER 2. DEPARTMENT OF AGRICULTURE  
ANIMAL SERVICES DIVISION**

**ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL**

Section

R3-2-801. Definitions

R3-2-803. Milk and Milk ~~Product~~ Products Labeling

**ARTICLE 9. EGG AND EGG PRODUCTS CONTROL**

Section

R3-2-903. Sampling: Schedule and Methods for Evidence

R3-2-906. Violations and Penalties

**ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL**

**R3-2-801. Definitions**

In addition to the definitions provided in A.R.S. §§ 3-601 and 3-661, the following terms apply to this Article:

1. "3-A Sanitary Standards" and "3-A Accepted Practices," as published in ~~Dairy and Food and Environmental Sanita-~~

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tion by the International Association for Food Protection, amended ~~June 1, 1992~~ May 31, 2002, means the criteria for cleanability of dairy processing equipment. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.

2. "C-I-P" means a procedure by which equipment, pipelines, and other facilities are cleaned-in-place as prescribed in the 3-A Accepted Practices.
3. "Converted" means the process by which a frozen dessert is changed from a frozen to semi-frozen form without any change in the ingredients.
4. "Fluid trade product" means any trade product as defined in A.R.S. § 3-661(5) that resembles or imitates milk, lowfat milk, chocolate milk, half and half, or cream.
5. "Food establishment" means any establishment, except a private residence, that prepares or serves food for human consumption, regardless of whether the food is consumed on the premises.
6. "Frozen desserts mix" or "mix" means any frozen dessert before being frozen.
7. "Grade A raw milk" means raw milk produced on a dairy farm that conforms to Section 7 of the PMO and the requirements of R3-2-805.
8. "Parlor" and "milk room" mean the facilities used for the production of Grade A raw milk for pasteurization.
9. "Plant" means any place, premise, or establishment, or any part, including specific areas in retail stores, stands, hotels, restaurants, and other establishments where frozen desserts are manufactured, processed, assembled, stored, frozen, or converted for distribution or sale, or both. A plant may consist of rooms or space where utensils or equipment is stored, washed, or sanitized and where ingredients used in manufacturing frozen desserts are stored. Plant includes:
  - a. "Manufacturing plant" means a location where frozen desserts are manufactured, processed, pasteurized, and converted.
  - b. "Handling plant" means a location that is not equipped or used to manufacture, process, pasteurize, or convert frozen desserts, but where frozen desserts are sold or offered for sale other than at retail.
10. "Plate line" means a horizontal structural member, such as a timber, that provides the bearing and anchorage for the trusses of a roof or the rafters.
11. "PMO" means the Grade A Pasteurized Milk Ordinance – 1978 Recommendations of the United States Public Health Service/Food and Drug Administration, ~~1999~~ 2001 Revision. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.
12. "Retail food store" means any establishment offering packaged or bulk goods for human consumption for retail sale.

**R3-2-803. Milk and Milk Product Products Labeling**

- A. ~~All~~ The manufacturer or processor shall ensure that milk and milk products listed in A.R.S. § 3-601(10), and Sections 1 and 2 of the PMO ~~shall be~~ are designated by the name of the product and shall conform to its definition.
- B. ~~All~~ The manufacturer or processor of milk and milk products shall conform with the labeling requirements in A.R.S. §§ 3-601.01 and 3-627, Section 4 of the PMO, and 21 CFR 101, 131, and 133, amended ~~November 20, 1996~~ April 1, 2002. This CFR material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.
- C. The name of the manufacturer or processor shall be on all cartons or closures where it can be easily seen. A manufacturer or processor ~~who that~~ who has plants in other states shall use a code number or letter to designate ~~where the state in which a carton or closure is manufactured or processed~~ where the state in which a carton or closure is manufactured or processed. If a manufacturer or processor has ~~more than one~~ more than one a plant within ~~the state Arizona~~ the state Arizona, the Dairy Supervisor shall issue a code number or letter for each plant and shall keep a record of the number or letter issued. Manufacturers and processors shall include the state Arizona code, 04, with ~~their~~ the plant number code assigned by the Dairy Supervisor.
- D. ~~If a plant manufactures or processes milk or milk products and packages them~~ are manufactured or processed and packaged at a plant for other retailers and the container or closure is not labeled the same as the manufacturer's or processor's like product, the manufacturer or processor shall include the statement "Manufactured or Processed at (name and address of plant or code number or letter)" ~~shall be included~~ shall be included on the carton or closure. The carton or closure may also contain the statement, "Distributed by: (name of person or firm)."
- E. ~~New or modified label~~. Any person planning to use a new or modified label on a container ~~may~~ shall submit the proposed label to the Dairy Supervisor for review.
  1. ~~If a new or modified label is submitted, the person shall provide duplicate copies of the proposed label.~~
  - 2.1. If the proposed label does not meet labeling standards specified in ~~R3-2-803(B)~~ subsection (B), the Dairy Supervisor shall note the required changes on the copies proposed label, and sign and return the proposed label to the person applicant.
  - 3.2. A ~~written~~ request may be submitted to the Dairy Supervisor for additional time to use the inventory amounts of slow moving cartons or closures before using a modified label. The Dairy Supervisor may approve continued use of the existing cartons and closures.

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**F.** Any person who markets, processes, manufactures, or sells any other food product as a milk product, shall submit a written request to the Dairy Supervisor.

**ARTICLE 9. EGG AND EGG PRODUCTS CONTROL**

**R3-2-903. Sampling: Schedule and Methods for Evidence**

- A. The An inspector may conduct random spot-check sampling ~~to determine if lots of a lot of eggs meet to determine whether the lot fails to meet minimum quality and weight standards.~~
- B. Representative egg sampling, ~~pursuant to~~ under A.R.S. § 3-710(G), shall be based on the following table. ~~Lots which do A lot that does~~ not meet minimum quality or weight standards shall receive a warning notice hold tag.

**MINIMUM NUMBER OF CASES AND CARTONS  
COMPRISING A REPRESENTATIVE SAMPLE**

<del>When lot size is in cartons of</del> <u>Lot size of cartons</u>	Minimum eggs for inspection	<del>When lot size is in 30 doz. cases</del> <u>Lot size of 30 doz. per case</u>	Minimum cases for inspection <sup>1</sup>
<del>1 - 4 Cartons</del> cartons	All	1 <del>Case</del> case	1 <del>Case</del> case
5 - 30 <del>Cartons</del> car- <u>tons</u> inclusive	50	2 - 10 <del>Cases</del> cases inclusive	2 <del>Cases</del> cases
31 - 120 <del>Cartons</del> car- <u>tons</u> inclusive	100	11 - 25 <del>Cases</del> cases inclusive	3 <del>Cases</del> cases
120 - 210 <del>Cartons</del> cartons inclusive	200	26 - 50 <del>Cases</del> cases inclusive	4 <del>Cases</del> cases
211 - 315 <del>Cartons</del> cartons inclusive	300	51 - 100 <del>Cases</del> cases inclusive	5 <del>Cases</del> cases
		101 - 200 <del>Cases</del> cases inclusive	8 <del>Cases</del> cases
		201 - 300 <del>Cases</del> cases inclusive	11 <del>Cases</del> cases
		301 - 400 <del>Cases</del> cases inclusive	13 <del>Cases</del> cases
		401 - 500 <del>Cases</del> cases inclusive	14 <del>Cases</del> cases
		501 - 600 <del>Cases</del> cases inclusive	16 <del>Cases</del> cases
		<del>for</del> For each addi- tional 50 <del>Cases</del> cases or fraction thereof of a case in excess of 600 <del>Cases</del> cases	1 <del>Case</del> case

<sup>1</sup>The An inspector shall take 100 eggs from each case for inspection.

- 1. ~~The~~ An inspector may draw additional samples to determine ~~if~~ whether the lot meets the minimum requirements.
- 2. When loose eggs are out of the case, the sample shall be based on ~~the~~ a carton.
- 3. Eggs shall be sampled on a 30-dozen-case basis. ~~All~~ When eggs are packed in other lot quantities, an inspector shall ~~be converted~~ convert the quantity of eggs to the equivalent 30-dozen-case amounts basis to establish the official sam-

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ple size.

~~C.~~ A lot shall be from one packer or one producer or any one source. The cartons, cases, or containers shall be labeled with one size, one quality grade, the packing date, and one brand name, if the brand is identified.

**R3-2-906. Violations and Penalties**

A. A dealer, producer-dealer, manufacturer, producer, or retailer, at each individual location, ~~shall be~~ is subject to the penalties in subsection (B) ~~if for any of the following actions occur~~ violations:

1. Category A:
  - a. Making a false or misleading statement relating to advertising or selling eggs and egg products;
  - b. Acting as a dealer, producer-dealer, producer, or manufacturer without a valid license;
  - c. Selling shell eggs with an incorrect, or incomplete expiration date, or ~~no~~ without an expiration date codes;
  - d. Selling grade AA or grade A eggs after the expiration date on the carton, case, or container, unless the eggs are exempt under A.R.S. § 3-715(K); The Department shall not penalize a retailer under this subsection if not more than 10% or 60 dozen of the eggs, whichever is less, are offered for sale after the expiration date on the carton, case, or container, under A.R.S. § 3-715(K);
  - e. Failing to maintain records and reports required by this Article;
  - f. Failing to label a carton, case, or container with one size, one ~~quality~~ grade, and one brand name;
  - g. Moving eggs; or an egg case, carton, or container with a warning tag or notice, or removing a warning tag or notice without permission from the Director;
  - h. Refusing to submit egg or egg product, an egg case, carton, container, subcontainer, lot, load, or display of eggs to inspection; or
  - i. Refusing to stop, at the request of an authorized representative of the Department, any vehicle transporting eggs or egg products.
2. Category B:
  - a. Extending the expiration date of shell eggs as defined in A.R.S. § 3-701(10); or
  - b. Advertising, representing, or selling out-of-state eggs as local eggs.
3. Category C:
  - a. Failing to ensure that shell eggs for human consumption are kept refrigerated at an ambient temperature not higher than 45° F;
  - b. Failing to ensure that frozen egg products for human consumption, labeled for storage at 0° F or below, are kept under refrigeration at a temperature ~~not higher than~~ of 0° F or lower; or
  - c. Failing to ensure that liquid egg products for human consumption are kept refrigerated at a temperature not higher than 40° F.

B. Any violation of this Article or of 3 A.R.S. 5, Article 1 not listed in subsection (A) is subject to a Category A civil penalty.

C. Under A.R.S. § 3-739, the civil penalty for a violation of subsection (A) is:

<b>Number of Violations</b>	<b>Category A</b>	<b>Category B</b>	<b>Category C</b>
1 ( <del>Noticee</del> )	Warning	Warning	Warning
2	<del>\$50.00</del> <u>\$50</u>	<del>\$50.00</del> <u>\$50</u>	<del>\$100.00</del> <u>\$100</u>
3	<del>\$100.00</del> <u>\$100</u>	<del>\$100.00</del> <u>\$100</u>	<del>\$200.00</del> <u>\$200</u>
4		<del>\$150.00</del> <u>\$150</u>	<del>\$400.00</del> <u>\$400</u>
5		<del>\$200.00</del> <u>\$200</u>	<del>\$500.00</del> <u>\$500</u>
6		<del>\$250.00</del> <u>\$250</u>	
7		<del>\$300.00</del> <u>\$300</u>	